

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CLARENCE ABNEY,

Plaintiff

v.

LISA W. BASIAL, et al.,

Defendants

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No. 1:16-cv-350

(Judge Kane)

(Magistrate Judge Carlson)

ORDER

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

Before the Court in the above-captioned action is the October 13, 2016 Report and Recommendation of Magistrate Judge Carlson (Doc. No. 32), wherein the Magistrate Judge recommended that Defendants' Motion to Dismiss for Failure to State a Claim (Doc. No. 25), be denied. No timely objections have been filed by Defendants, and Plaintiff does not object to the recommendation. However, Plaintiff has filed Objections to the Report and Recommendation (Doc. No. 33), to "highlight errors of law and fact that might otherwise give rise to confusion later in this litigation." (*Id.*) Plaintiff's Objections seek to clarify that: the basis for Count One of Plaintiff's Amended Complaint is 42 U.S.C. § 1985(2); Defendants bear the burden of establishing grievance procedures relevant to their non-exhaustion of administrative remedies defense; and Plaintiff's Amended Complaint does not allege that Plaintiff notified his lawyer about alleged misconduct at SCI-Huntingdon. (Doc. No. 33 at 2-6.) Plaintiff's clarifications are noted for the record.

AND NOW, on this 26th day of January 2017, upon review of the record and the

applicable law, **IT IS ORDERED THAT:**

1. The Court adopts the Report and Recommendation (Doc. No. 32), of Magistrate Judge Carlson;
2. The Defendants' Motion to Dismiss (Doc. No. 25), is **DENIED** without prejudice to their ability to renew some or all of their arguments in a properly supported motion for summary judgment; and
3. This matter is referred back to Magistrate Judge Carlson for further pretrial management.

s/ Yvette Kane
Yvette Kane, District Judge
United States District Court
Middle District of Pennsylvania